

Letter of Findings Number: 08-0732P
Income Tax
For Tax Year 2007

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a Michigan S corporation with shareholders in Indiana. Taxpayer filed returns with the Department reflecting withholding on income from Indiana sources. Taxpayer filed WH-18 and WH-3 forms for 2007. Taxpayer requested an extension to file the 2007 income tax return until October 15, 2008, in order to finalize its federal income tax return. As a result of that finalization, Taxpayer determined that additional Indiana income tax should have been withheld for its Indiana shareholders. Prior to the October 18, 2008 deadline, Taxpayer remitted the additional tax. The Department issued a proposed assessment for interest and penalty for the amount which should have been withheld. Taxpayer paid the proposed assessment for interest, but protested the proposed assessment for penalty. Taxpayer protests that it has made every effort to comply with Indiana's tax requirements. Taxpayer did not request an administrative hearing. This Letter of Findings was written based on the material in the file. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of negligence penalty for 2007. Taxpayer states that it made reasonable attempts to comply with Indiana's withholding requirements and that it remitted the additional tax due prior to the October 15 deadline, including filing WH-18, WH-3 and DB020W-NR forms. Taxpayer also explained that it remitted what it reasonably believed was due to be withheld originally. Taxpayer also explains that 2007 was the first year in which it had withholding duties in Indiana.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added.)

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred additional income taxes which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has provided sufficient explanation to establish that it exercised ordinary business care in its withholding duties. Also, Taxpayer reported and remitted the additional withholding tax prior to being notified of a liability by the Department. Taxpayer has established that its failure to pay the full amount of taxes in question was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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